

BOARD OF REVENUE, BIHAR.

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THE BIHAR SALE LAW MANUAL, 1936

CORRECTION SLIP NO. 1.

Patna, the 12th June 1937.

I.—The following corrections shall be made in the Bengal Land Revenue Sales Act, 1859 (XI of 1859), reproduced on pages 1—90 of the Bihar Sale Law Manual, 1936.

- Section 8. *For* the first "Government" *substitute* "the Provincial Government" and *for* the second "Government" *substitute* "the Crown".
- „ 14. *For* "Government" *substitute* "the Provincial Government".
- „ 15. *For* "to Government" *substitute* "to the Provincial Government".
- „ 32. *For* "the Government" *substitute* "the Provincial Government".
- „ 35. *For* "Government" *substitute* "the Provincial Government".
- „ 50. *For* "by Government" *substitute* "by the Provincial Government".
- „ 52. *For* "Regulations of Government" *substitute* "law for the time being in force".
- „ 58. *For* "Government" *substitute* "Provincial Government".

Sections 60 and 61. *For* "Government" *substitute* "the Provincial Government".

[Slip no. 1, dated the 12th June 1937.]

II.—The correction noted below shall be made in the Bengal Land Revenue Sales Act, 1868 [Act VII (B.C.) of 1868], as reproduced on pages 91—101 of the Bihar Sale Law Manual, 1936.

Section 1. *For* "under Government" *substitute* "under the Crown".

[Slip no. 1, dated the 12th June 1937.]

[Price—3 pias.]

BGP (Bd. of Rev.) 29—405—3-7-1937—ARN

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BOARD OF REVENUE, BIHAR.

THE BIHAR SALE LAW MANUAL, 1936.

CORRECTION SLIP NO. 2.

Patna, the 11th September 1937.

Page 61—

Cancel the note and its marginal heading below section 30 of Act XI of 1859.

[Slip no. 2, dated the 11th September 1937.]

[Price—3 pies.]

BGP (Bd. of Rev.) 59—405—16-9-1937—MMG

BOARD OF REVENUE, BIHAR.

THE BIHAR SALE LAW MANUAL, 1936.

CORRECTION SLIP NO. 3.

Dated Patna, the 22nd November, 1937.

Pages 168-171.

Substitute the following revised rules for the existing ones in section IV :—

“ SECTION IV, SYSTEM TO BE FOLLOWED IN THE ARREAR COLLECTION DEPARTMENT AS REGARDS THE PAYING OF ARREARS.

1. The payer will prepare chalans in triplicate in form no. 368 (H) or 369 (B) of Schedule XIV and in duplicate in Form no. 186—Schedule LIII, *Filling up of chalans.* writing or having written on the former chalan the amount of the outstanding balance of land revenue or cess (and interest thereon) he intends to pay in, with necessary particulars against the various cross heads ; and on the latter chalan the process fees or costs, etc., due, which he wishes to pay, as well as the other requisite entries.

2. The payer will then present his five chalans to the clerk of the Arrear Collection Department deputed *Payer to present chalans to the clerk of the Arrear Collection Department.* to receive chalans, over whose desk should be hung a board, on which should be painted in large characters in English and the vernaculars in use in the district—

“ ARREAR CHALANS RECEIVED HERE ”.

3. On receiving the chalans the clerk will stamp across each of the five forms the word “ ARREARS ” and *Treatment of chalans.* pass them and the payer on to the clerk who keeps the account of the arrear which the payer wishes to liquidate. This latter clerk will then see that the copies agree with the originals, that

(Price—9 pias.)

the entries as to the arrear to which the sum is to be credited, and also the number and date of the case concerned are correctly entered. He will then give any information as to the state of the balance which the payer may require and initial all the chalans. But as regards a land revenue arrear chalan and its copies, he will not initial the chalans until he has ascertained that the Collector has agreed to accept from the defaulter payment of such arrear.

4. The clerk will then ask the payer to affix on the duplicate copy of the chalan in form no. 186, Schedule LIII, relating to process fees or costs, etc., due, stamps of the value equivalent to the amount mentioned therein. The clerk will retain the duplicate copy and will enter in red ink across the original chalan the words "Paid in stamps," and return it to the payer along with the other three chalans relating to land revenue or cess arrears. The Deputy Collector in-charge of the Arrear Collection Department will see that the stamps are punched in his presence and certify on the chalan that the requisite amount has been paid in stamps. The clerk will enter the value of the stamps in Register 58 and then file them with the record of the case.

5. The payer will next present his three chalans in form no. 368 (H) or 369 (B) to the Accountant, who after seeing—
 Payer to present chalans to the Accountant.

(I) that these are duly stamped "ARREARS" the need of which he can at once ascertain by a glance at the column "Year and kist for which paid,"

(II) that the copies agree with the original,

(III) that each has been stamped by the Arrear Collection Department clerk and initialled by the clerk of the Department to which the arrears relate, and

(IV) that the amount noted in words agrees with that given in figures

will sign and date the chalan and its copies and return all three to the payer.

6. The payer will then present his three chalans to the Treasurer, who after carrying out or causing to be carried out the procedure referred to in clauses (a) to (e) both inclusive, paragraph (iii) rule 2, section XVI, chapter II, Tauzi Manual, will return all three chalans to the payer.

7. The payer will then again go to the Accountant and give him the three chalans. The Accountant will then enter the details of Land Revenue and local cess (and interest thereon) in his Register in the form of Appendix K to the Tauzi Manual, put on each chalan in his registers.

chalan and its copies the serial number which the entry relating to it bears in the register in which its details have been noted, and return the original only to the payer, retaining the two copies.

NOTE.—(rules 5-7). In places where the business of the Treasury is conducted by a branch of the Imperial Bank of India, the procedure laid down in Article 302 of the Civil Account Code, Volume II, should be followed.

8 The Accountant will on the following morning distribute one copy of the chalan to the Head Tauzi Navis and the other to the Arrear Collection Department and in a manuscript book to be kept by him for the purpose, will obtain from the officer, to whom such chalans may be made over, a receipt showing the total number of such chalans so made over daily and their total value.

9. As regards the method to be followed in the amalgamated Tauzi Department after the receipt of the chalan copies from the Accountant, the procedure laid down in rules 4 and 5, section XVI, chapter II, Tauzi Manual, will *mutatis mutandis* apply, but chalans for arrear payments must be distinguished from those for current, and a separate total be given in column 9 of the register prescribed in rule 4 (d), section XVI, chapter II of the Tauzi Manual.

10. The payments referred to in the copies of the chalans including the one already retained under rule 4 above on which stamps have been affixed will then be noted up in the registers relating to the cases in question with which the chalan copies should then be filed.

11. To the Arrear Collection Department will belong the duty of maintaining Register 19 (Sales for arrears of revenue).

Register 19.

[Slip no. 3, dated the 22nd November, 1937.]

Per. G. 3-20

A MANUAL
OF
THE REVENUE AND THE PATNI
SALE LAWS
WITH NOTES AND THE RULES, &c.,
UNDER THEM.

*Published under the Authority of the Board of Revenue,
Bihar.*



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P R E F A C E .

THIS is a reprint of the Sale Law Manual, 1923, with corrections up to date.

2. Errors and omissions in the Manual should be brought to the notice of the Board.

3. This Manual is to be briefly cited as "The Bihar Sale Law Manual, 1936."

BOARD OF REVENUE, BIHAR : }

The 4th June 1936. }

A. N. DAS,

Secretary.

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A
MANUAL
OF
THE REVENUE AND THE PATNI SALE LAWS.

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APPENDIX A.
FORM OF SALE LIST.
(See SECTION III, RULE 18.)

Sale List for the Kist ending the of 19 , District

1	2	3			4	5	6	7			8			9			10	11	12	
Tausi no.	Name of Estate and Pargana or Tappa etc.	Sadr jama of whole estate.			Whether the whole estate is to be sold.	If only a share is to be sold, the specification of such share or shares.	Names of proprietors of property to be sold.	If only a share is to be sold the sadr jama of such share.			If the whole estate is to be sold, the arrears due from it.			If only a share is to be sold, the arrears due from it.			Remarks and orders.	If sold, to whom sold, and price obtained.	Final disposal.	
		Rs.	A.	P.				Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.				

APPENDIX A.

APPENDIX B.

APPENDIX B.

I. CONNECTED REGULATIONS AND ACTS.

1. REGULATION XI OF 1822—THE BENGAL GOVERNMENT INDEMNITY REGULATION, 1822 (UNREPEALED SECTIONS).

36. If a Collector shall at any time, being so instructed by either the Government or the Board, purchase on account of Government an estate exposed to sale for the recovery of arrears of revenue, the rules applicable to the management of ordinary malguzari mahals held khas or farmed shall be considered applicable to such estate and also to all other estates the property of Government according as they may be held khas or let in farm.

Rules for khas management applied to purchases by Government.

37. It is hereby declared and enacted that Government is not, and shall not be held, liable for any error or irregularity which may have occurred, or shall occur, in any order, proceeding or decree of any Court of Judicature, whether a revenue or other officer of Government may or may not have been, or shall or shall not be employed in giving effect to the order, proceeding or decree deemed to be erroneous or irregular. Nor shall any officer of Government be held liable for anything done or suffered in conformity with an order, proceeding or decree of a Court as aforesaid; and if any person or persons shall sue Government or any officer of Government for anything done or suffered under an order, proceeding or decree of Court as aforesaid, such person or persons shall be non-suited with costs.

Government not liable for errors of Courts.

The same principle is and shall be held applicable to all orders, proceedings or decrees made, held or passed by any public officer, in virtue of powers vested in him for the judicial cognizance of any pleas, suits, complaints or information whatsoever, unless otherwise specially provided.

2. ACT XII OF 1841.—THE BENGAL LAND REVENUE SALES ACT, 1841 (UNREPEALED SECTION).

2. There shall be no demand of interest or penalty

Interest and penalty upon any arrear of land revenue abolished.

3. ACT VII (B. C.) OF 1876—THE LAND REGISTRATION ACT, 1876. (PART V.)

(*Of the Opening of Separate Accounts in Respect of Shares.*)

69. Notwithstanding anything contained in Act XI of 1859 (*an Act to improve the law*

relating to sales of land, etc.) from the commencement of this Act, no separate account shall be opened under the provisions of section 10

or section 11 of the said Act in respect of the share of any applicant under the said sections otherwise than for a share corresponding with the character and extent of interest in the estate in respect of which such applicant is recorded as proprietor or manager under this Act.

70. When a proprietor of a joint estate, who is recorded as proprietor of an undivided interest

Proprietor holding undivided interest in specific lands may apply for separate account, held in common tenancy in any specific portion of the land of the estate, but not extending over the whole estate,

desires to pay separately the share of the Government revenue which is due in respect of such interest, he may submit to the Collector a written application to that effect. The application must contain a specification of the land in which he holds such undivided interest, and of the boundaries and extent thereof, together with a statement of the amount of Government revenue heretofore paid on account of such undivided interest. On the receipt of this application, the Collector shall cause it to be published in the manner prescribed for publication of notice in section 10 of Act XI of 1859.

In the event of no objection being urged by any recorded co-sharer within six weeks from the time of publication, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it.

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The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

Notwithstanding anything hereinbefore contained, no application under this section or under section 10 or section 11 of the Bengal Land Revenue Sales Act, 1859, shall be received unless it is accompanied by a fee of two rupees.

71. Section 12 of the said Act XI of 1859 shall apply to every application made under Sections 12, 13 and the last preceding section; and the 14 of Act XI, 1859, effect and consequences of opening a separate account under the last preceding section shall be such and the same as are described in section 13 and in section 14 of Act XI of 1859.

72. Whenever any share in respect of which a separate account has been opened by the Collector under section 10 or section 11 of the said Act XI of 1859, or under section 70, shall no longer correspond with the character and extent of interest held in the estate by any one proprietor or manager, or jointly by two or more proprietors or managers any proprietor or manager whose name is borne on the General Register under this Act as proprietor or manager of any interest in the share in respect of which such separate account is open, may submit to the Collector a written application setting out the circumstances under which such share no longer corresponds with the extent of interest held in the estate by any recorded proprietor or manager or jointly by two or more recorded proprietors or managers, and specifying the manner in which such share has become broken up and distributed among the proprietors of the estate, and praying that the separate account standing open in respect of such share shall be closed, and, if he so desire, praying that another separate account be opened in respect of any other share or shares, which were wholly or partly included in the share in respect of which the previous separate account was open.

Illustration.

In a certain estate separate accounts have been opened under section 10 of Act XI of 1859 for the 4 annas share of

APPENDIX B.

A, and also for the 5 annas share of *B*, the accounts of the remaining 7 annas share being kept jointly in the names of the remaining proprietors *C*, *D* and *E*.

In course of time *X* has inherited *A*'s 4 annas share, and also *C*'s interest in the 7 annas share, which amounted to 3 annas; *X* has also acquired by purchase 2 annas out of *B*'s 5 annas share, so that the interests in the estate are now distributed as follows :—

<i>X</i>	...	...	...	9 annas.
<i>B</i>	...	...	...	3 „
<i>D & E</i>	...	...	...	4 „

X, if a recorded proprietor of the estate, may apply to the Collector to close the separate account which is open in respect of *A*'s 4 annas share, and also the separate account which is open in respect of *B*'s 5 annas share as neither of these shares corresponds with the extent of interest held by any one proprietor, or held jointly by two or more proprietors in the estate, and in the same application *X* may apply for the opening of a separate account in respect of the 9 annas share which he now holds.

Any of the other proprietors might also make a similar application.

73. On receipt of such application, the Collector shall cause a copy of the same to be published in the manner provided in section 10 of Act XI of 1859; and if within six weeks from the date of such publication no objection is made by any other recorded proprietor of the estate, the Collector shall close the separate account which then stands open, and shall open a separate account with the applicant as required by him, under section 10 or section 11 of Act XI of 1859, or under section 70 as the case may be.

74. If any recorded proprietor of the estate, whether the same be held in common tenancy or otherwise, object that the share in respect of which any separate account is open as aforesaid has not been broken up, and does still correspond with the character and extent of

APPENDIX B.

interest held by any one proprietor or manager, or jointly by two or more proprietors or managers,

or object that the applicant has no right to the share claimed by him, or that his interest in the estate is less or other than that claimed by him,

or (when the application is in respect of a specific portion of the land of an estate, or in respect of an undivided interest held in common tenancy in any specific portion of the land of the estate) object that the amount of Government revenue stated by the applicant to have been heretofore paid on account of such portion of land, or on account of the applicant's undivided interest therein, is not the amount which has been recognized by the other sharers as the Government revenue thereof.

the Collector shall refer the parties to the Civil Court, and shall suspend proceedings until the question at issue is judicially determined.

74A. Notwithstanding anything contained in the foregoing sections, if the Collector becomes aware otherwise than after receipt of an application under section 72, that any separate account opened under section 10 or section 11 of the Bengal Land Revenue Sales Act, 1859 or under section 70 or section 72 of this Act in respect of any estate does not represent existing facts, he may, after service of a notice on the recorded proprietors in the manner prescribed by section 50 and after hearing any objection which may be preferred, close the account.

4. ACT IX (B.C.) OF 1870 (PART III).

PROTECTION FROM SALE OF CERTAIN ESTATES.

23.* *Clause 1.*—Except as hereinafter provided by section 23A, every estate, and, subject to the provisions of section 14 of Act XI of 1859, every share or part of an estate for which a separate account has been opened under section 10 or section 11 of the said Act, or

* Sections 23 and 23A have been substituted for the original section 23 by Act III (B. C.) of 1881, section 4.

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under section 70 of Bengal Act VII of 1876, shall be exempt from sale for arrears of Government revenue which have accrued whilst such estate, share or part has been under the charge of the Court.

Provided that all such arrears of revenue shall be the first charge upon the sale-proceeds of any estate, share or part which may be sold for any other cause than for such arrears of revenue.

Clause 2.—If at the time when such estate, share or part ceases to be under the charge of the Court of Wards, an arrear of revenue is due on account thereof, the Collector may attach such estate, share or part and collect the rent, cesses, and other demands due, and all arrears thereof, managing such estate, share or part either directly or through a manager, or by farming it for a period not exceeding five years, as he may think fit.

Provided that when such estate, share or part has been attached under the provisions of this clause, the proceeds shall be paid to the Collector; and the Collector, after deducting the claims of Government for revenue and other public demands, together with any interest which has accrued upon such public demands other than Government revenue, and the charges of management, due up to the date of making such deduction, shall release such estate, share or part from attachment and pay any balance of the proceeds still remaining in his hands to the proprietor of such estate, share or part, or to his duly constituted agent, and shall furnish such proprietor or agent with an account of the receipts and expenditure extending over the time when such estate, share or part was under attachment.

23A.* Notwithstanding anything in clause 5, section 8, Regulation I of 1793, or in section 23 of this Act contained, any estate, share or part of an estate on which an arrear of revenue has accrued while under the charge of the Court may at any time be sold under the provisions of the law for the time being in

* Sections 23 and 23A have been substituted for the original section 23 by Act III (B. C.) of 1861, section 4.

APPENDIX B.

force for the recovery of arrears of Government revenue, if the Court has certified in writing that the interest of the ward require that such estate, share, or part be so sold, and has stated in such writing the reasons upon which it has arrived at such conclusion.

24. No estate the sole property of a minor or of two or more minors, and descended to him or them by the regular course of inheritance, or by virtue of the will of, or some settlement made by, some deceased owner thereof, shall be sold for arrears of revenue accruing subsequently to his or their succession to the same, until such minor or one of such minors has completed his age of twenty-one years, but all arrears of revenue shall be the first charge upon the proceeds of such estate, if the estate is sold for any other cause during such minority.

The Collector may, on an arrear so accruing on any such estate, attach the estate and collect the rents and all arrears of rent due, managing the estate either directly or through a manager or by farming it, as he may think fit, for a period not exceeding ten years, nor extending beyond the time when such minor or one of such minors completes his age of twenty-one years.

25. The exemption from sale for arrears of revenue given by section 24 shall only apply to cases in which a written notice of the fact that the estate is the sole property of one or more minors, and entitled to such exemption, has been served on the Collector before the sale.

26. When an estate has been farmed under the provisions of section 24, the proceeds of such farm shall be paid to the Collector, and the Collector, after deducting the amount of the claims of the Government for revenue and other public demands and the charges of management, shall either pay the proceeds to the person authorized to receive them for the proprietor, or shall dispose of them in any of the modes mentioned in section 49 or in section 50.

APPENDIX B.

5. ACT V (B. C.) OF 1897—THE ESTATES PARTITION ACT.

(SECTIONS 15 AND 16.)

15. If any estate has been declared to be under partition as provided in section 29, any arrears of land revenue of an estate which is under partition. before the date specified in the notice issued under section 94 may be realized by sale of the estate as if the same had not been declared to be under partition; and if such sale takes place, the partition proceedings shall cease from the date thereof, but shall be revived if the sale is set aside.

16. Nothing contained in section 15 shall be deemed to affect the provisions of section 10, section 11, section 12, section 13, or section 14 of Act XI of 1859 (*an Act to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency*), or any similar law for the time being in force in respect to the opening of separate accounts for different shares in an estate and the protection afforded to such shares thereby.

Provided that, if any share in any estate is sold for its own arrears of land revenue while such estate is under partition in accordance with the provisions of this Act, such share shall be sold subject to the partition proceedings, which shall proceed as if no such sale had taken place; and the purchaser of the share sold may, from the date of such sale, exercise all the rights which the proprietor whose share he has purchased might have exercised, and shall be subject to all the liabilities to which such proprietor would have been subject in respect of the partition proceedings.

6. ACT 6 OF 1853.

(THE RENT RECOVERY ACT, 1853.)

(15th April, 1853.)

An Act relating to summary suits for arrears of rent, to sales of patni taluks and other saleable tenures, and to sales of land in satisfaction of summary decrees for rent.

Whereas by Regulation 8, 1831, of the Bengal Code the hearing and decision of summary suits or claims relating to arrears or

Preamble.

APPENDIX B.

exactions of rents were transferred from the Judges of the Zila or City Courts to the Collectors of land-revenue of the several districts;

And whereas by Regulation 7, 1832, of the Bengal Code the conduct of sales of *patni* taluks and other saleable tenures under Regulations 8, 1819, and I, 1820, of the same Code, and the performance of other acts preparatory to, or connected with, such sales, were transferred to the Collector or Deputy Collector of land-revenue or Head Assistant to the Collector or Deputy Collector, subject to an appeal as therein provided;

And whereas by Act 8, 1835, the power theretofore vested in the Judge of the Diwani Adalat of selling land in satisfaction of summary decrees for rent was transferred to the Collectors of land-revenue, and it was enacted that all sales for the recovery of arrears of rent held under clause 7, section 15, Regulation 7, 1799, should be conducted by the Collector, his Deputy or duly authorized Assistant, and that ten days' notice should be given of such sales by advertisement to be stuck up at the catcherry of the Zila Court or local Adalat and that of the Collector

And whereas doubts may be entertained as to who ought to exercise the jurisdiction transferred by the above mentioned Regulations and Acts, where lands situate within the zila or other district of one Collector form part of an entire estate paying revenue to the Collector of another zila or district;

in order therefore to avoid such doubts, and also to define who are the proper officers to exercise such jurisdictions in cases where lands are situate in a district assigned to an independent Deputy Collector, and also in cases where lands held in *patni* or other tenure at one entire rent are situate in two or more Collectorates

It is enacted as follows :—

1. If the lands which may be the subject of any such sale or to the rent of which any such suit may relate, be all situate in one collectorate, the Collector of such collectorate is the Collector to conduct the sale or to hear and decide the suit.

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If one *taluk* or tenure shall comprise lands situate in two or more collectorates, or if any lands situate in two or more collectorates be held under one lease or engagement or at one entire rent, the Collector in whose collectorate the greater part of such lands shall be situate is the Collector to conduct the sale of such *taluk* or tenure or of such lands, and to hear and decide any summary suit relating to arrears or exactions of rent in respect thereof.

2. If a Collector to whom application shall be made to exercise any of the powers above-mentioned shall entertain any doubt as to whether the lands or the greater part of them are situate within his collectorate, he shall report the case for the order of the Board to which he is subordinate, and, if ordered by such Board to proceed in the matter, such order shall be conclusive upon the question of his jurisdiction.

Procedure in case of doubt as to officer having jurisdiction.

3. The word "Collectorate" in this Act means the *zila* or other district to which a Collector is appointed, and no lands situate beyond the limits of such *zila* or district shall be deemed to be situate within the collectorate by reason of their forming part of an estate paying revenue to the Collector thereof.

"Collectorate" defined.

4. An independent Deputy Collector may, within his Deputy collectorate, exercise all the powers and jurisdictions of a Collector with which he may be entrusted, in the same manner and to the same extent as a Collector may do within his Collectorate; and, with reference to the exercise of such powers and jurisdictions, his Deputy collectorate shall be deemed a collectorate, and he shall be deemed to be a Collector within the meaning of this Act.

Powers and jurisdiction of independent Deputy Collector.

5. An independent Deputy Collector is an officer appointed by Government to act as Deputy Collector independently of a Collector, whether his office is one for the receipt of revenue or not.

"Independent Deputy Collector."

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A Deputy collectorate is the district within which an independent Deputy Collector is directed by Government to act.

"Deputy collectorate." collecto-

6. In cases of sales by an independent Deputy Collector under the above-mentioned Regulations or Act, any notice thereby required to be stuck up at the cutcherry of the Collector may be stuck up at the cutcherry of the Deputy Collector.

Publication of notice of sale by independent Deputy Collector.

7. An independent Deputy Collector may exercise the powers assigned to him over any part of his Deputy collectorate in public *cutcherry*, in whatever part of his Deputy collectorate the same may be situate or held.

Exercise of powers of independent Deputy Collector.

8. Any notice required by the above-mentioned Regulations or Act to be given by advertisement to be stuck up at the cutcherry of the Zila Court or local Adalat shall be stuck up at the Zila Court or local Adalat within the jurisdiction of which the lands to be sold, or the greater portion of them, as the case may be, shall be situate.

Publication of notice required by law to be advertised.

9. Rep. by the Repealing Act, 1873 (12 of 1873).

10. Rep. by the Bengal Rent Recovery (Under-tenures) Act, 1865 (Ben. Act 8 of 1865).

II. Rules framed under sections 23—26 of Act IX (B.C.) of 1879, regarding arrears of revenue due from estates under the Court of Wards or proposed to be taken under the Court of Wards, reproduced from the Wards' Manual, 1927.

1. As soon as the Court takes charge of a share in an undivided joint estate, the Collector is at once to take steps to open a separate account for such share in accordance with section 10 or 11 of Act XI of 1859, or section 70 of Act VII (B.C.) of 1876. (Rule 261 of the Wards' Manual, 1927.)

Opening of separate account for share in undivided joint estate.

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2. If any arrear of revenue be due from an estate of which it is proposed that the Court shall take charge a report of the circumstance must be specially made through the Commissioner to the Board before the estate is brought under the Court; and if the estate be the sole property of a minor or two or more minors, having descended to them by the regular course of inheritance, or by virtue of the will of the deceased owner, the report must, with reference to section 24 of the Act, state what portion of the arrear has accrued before, and what portion has accrued after, the date on which the minor or minors succeeded to the property. (Rule 86 of the Wards' Manual, 1927.)

3. The Board's Circular Order no. 6 of May 1881, regarding the process of recovery of arrears of revenue due from estates of which a joint and undivided share is the property of a minor or other disqualified proprietor under the Court, is in force and will be found in Appendix C of this Manual. (Rule 262 of the Wards' Manual, 1927.)

4. With respect to the liability of minor's shares, in joint estates under the Court to be sold for arrears of revenue which accrued before the opening of separate accounts for such shares, it has been ruled that a subsequent opening of separate accounts does not afford protection to the shares so separated on account of arrears of revenue which accrued upon the whole estate before separation. The separate liability of the share commences from the date on which the Collector gives his sanction to the opening of the separate accounts. Arrears which may have accrued before that date must be satisfied by the sale of the whole estate. A joint undivided share of an estate cannot be sold under Act XI of 1859, which only contemplates the sale of entire properties or of such shares of entire properties, in respect of which separate accounts have been opened. (Rule 263 of the Wards' Manual, 1927.)

5. Collectors and Managers are warned of the heavy responsibility which the exemption from sale (under clause 1, section 23 of the Act) imposes on them in respect of arrears from sale-proceeds.

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of any arrears of revenue which they allow to accrue while the estate is under the charge of the Court by applying the proceeds of the property to any purposes other than those specified in clause I of section 48 of the Act before paying the instalments of Government revenue, and of all cesses and other public demands due from the property. If any estate, share, or part is sold for any cause, other than for an arrear of revenue, by order of the Court or of a competent Court the arrear of revenue due from such estate, share, or part must first be deducted from the proceeds of the sale as required by section 23 of the Act. (Rule 264 of the Wards' Manual, 1927.)

6. Under clause 2 of section 23 of the Act, the Collector may attach any estate, share or part from which an arrear of revenue is due at the time such estate, etc., ceases to be under the management of the Court, and may manage it, as he thinks fit, until the arrear of revenue due at the date of attachment, or which may fall due during the period of attachment, is recovered. (Rule 265 of the Wards' Manual, 1927.)

Attachment of estate for arrears.

7. Under section 23A of the Act, any estate, share or part of an estate on which an arrear of revenue has accrued while under the charge of the Court, may at any time be sold if the Commissioner has certified in writing that the interests of the Ward require that such estate, share or part be so sold, and has stated in such writing the reasons upon which he has arrived at such conclusion. (Rule 266 of the Wards' Manual, 1927.)

Sale of estate for arrears.

8. It will be observed that the exemption in section 23 of the Act extends only to sale during the period of management. The law does not prohibit the realization by sale, after release of the estate, of arrears which have accrued before the date on which the disqualified proprietor or proprietors succeeded to it, nor in the case of an estate, being the property of any disqualified proprietor other than a minor, before the date on which it was brought under the management of the Court. (Rule 267 of the Wards' Manual, 1927.)

Exemption from sale.

APPENDIX C.

APPENDIX C.

SELECTIONS FROM THE CIRCULAR ORDERS OF THE BOARD OF REVENUE.

1. No. 14 OF JULY 1870.

NAZIRS, when deputed to attach and sell property under Act VII (B.C.) of 1868, are to be paid the actual travelling expenses incurred by them, together with any further remuneration which may in each case be thought necessary, not exceeding 5 per cent, on the value of the property sold. Charges of the latter description may be disbursed by Collectors, under the rules applicable to contingent expenses.

2. No. 4 OF FEBRUARY 1881.

THE Board having reason to believe that the ruling of the Privy Council in the case of Banwari Lal Sahu (Defendant) *versus* Mahabir Prasad Singh and others (Plaintiffs), reported at page 297, Vol. XII of the Bengal Law Reports, is often overlooked, desire to call the attention of all Revenue officers to that ruling, in which it has been held that the third clause of section 5 of Act XI of 1859, which requires that under certain circumstances, a notification shall be issued before an estate is sold, applies to cases in which a whole estate, or a portion of an estate, having been attached under the Civil Procedure Code, is in the hands of a Manager appointed on the application of the judgment-debtor for the purpose of liquidating the debts.

3. No. 6 OF MAY 1881.

THE Board have observed that there is considerable confusion and uncertainty regarding the process of recovery of arrears of revenue due from estates of which a joint undivided share is the property of a minor or other disqualified proprietor under the Court of Wards, and that different officers take different views of the law on the subject. The following instructions are accordingly issued, after consultation with the Law Officers of Government, and with the approval of the Lieutenant-Governor:—

I. The first portion of section 17, Act XI of 1859, has been repealed by section 2, Act III (B.C.) of 1881, and the exemption from sale for arrears of revenue, which the law affords to proprietors under the charge of the Court of Wards,

APPENDIX C.

is now contained in section 23 of the Court of Wards Act, 1879, as amended by section 4, Act III (B.C.) of 1881. The subjects to which the exemption extends are properties falling under either of the following categories :—

- (1) every estate ;
- (2) subject to the provisions of section 14 of Act XI of 1859, every part or share of an estate for which a separate account has been opened under section 10 or 11 of Act XI of 1859, or under section 70 of Act VII (B.C.) of 1876.

The sections, therefore, do not exempt from sale for arrears of revenue an estate in which a minor or disqualified proprietor under the Court of Wards has a joint undivided share only. It will be observed, also, that even to the share for which a separate account has been opened, a limited protection only is given. Such a share is exempt from sale, subject to the provisions of section 14 of Act XI of 1859, i.e., if the arrears cannot be otherwise realized, the entire estate may be sold, including the separated share under the charge of the Court.

The interpretation clause of Act VII (B.C.) of 1868, which applies to Act XI of 1859,*

*The first part of section 17, Act XI of 1859, has been replaced by clause 1, section 23, Act IX (B.C.) of 1879, as amended by Act III (B.C.) of 1881. defines an estate to be "any land or share in land subject to the payment to Government of an annual sum in respect of which the name of a proprietor is entered on the register, known as the general register of all revenue-paying estates". A joint undivided share is not "a share in land subject to the payment to Government of an annual sum, &c." and an estate in which the Court of Wards manages only a joint undivided share is not, therefore, an estate under the management of the Court. It follows that such a share, or an estate which contains such a share, does not come under the protection afforded by clause 1, section 23, Act IX (B.C.) of 1879, as amended by section 4, Act III (B. C.) of 1881.

II. There is no other law under which Wards' estates are protected from sale for arrears of revenue, and consequently no estate in which a minor or other disqualified proprietor under the Court of Wards holds a joint and undivided share is exempted from sale.

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III. It will be observed that section 23 of Act IX (B.C.) of 1879, as amended, exempts from sale even the protected estates, shares, and parts of estates only "for arrears of Government revenue which have accrued whilst such estate, share or part has been under charge of the Court."

If such arrears of revenue accrue on such an estate, share, or part which is not exempted from sale, the proper course will be for the Collector to advertise the estate, share, or part for sale in the usual way. But he should allow every facility to the Manager on behalf of the Court of Wards to pay up the whole of the arrear that has fallen due. The Manager on payment of the whole arrear will, of course, be entitled to bring a contribution suit against the co-sharers of the minor or other disqualified proprietor for the amount of arrear of revenue with costs that he has paid on their account.

IV. The Collector will in no case attempt to enforce recovery of the arrear from the co-sharer by the certificate procedure. The certificate procedure should only be used to enforce payment of a balance not covered by sale.

V. The Board take this opportunity of again drawing the attention of all Collectors and Managers of estates to the importance of opening separate accounts under the provisions of Act XI of 1859, or of section 70, Act VII (B. C.) of 1876, for all shares held by the Court of Wards, and thus obtaining the protection which the law affords to separated shares. If separation is opposed by the other proprietors, it will be a matter for consideration whether it will not be better to let the Wards' share go to sale than to continue to hold it unprotected. But this course should not be adopted without the approval of the Board, previously obtained.

4. No. 8 OF DECEMBER 1898.

THE special attention of all Revenue officers is drawn to the judgment of the Privy Council of the 14th of May 1898 in the case of *Balkishen Das and others versus Simpson*, reported at pages 833 to 844 of the Indian Law Reports, Calcutta series, Volume XXV, Part XI, November 1898, regarding the sale of an estate under Act XI of 1859 for arrears of revenue, when there were really no arrears.

See note 5, section 33, Act XI of 1859.

APPENDIX C.

5. No. 11 OF MAY 1901.

*Extract paragraphs 3 to 5 (classification and disposal of
Chaukidari Chakran lands).*

3. The effect of the sale of *chaukidari chakran* lands is clearly described in section 55 of Act VI (B.C.) of 1870. The purchaser acquires the right to hold them free of incumbrances, but subject to the *chaukidari* assessment at half rates. He cannot be said to hold them revenue free, because, at the time of the permanent settlement, revenue was assessed on them under section 41 of Regulation VIII of 1793. The exact legal status of the auction purchasers of such lands need not be settled by the Revenue authorities. It is for the Civil Courts to decide it. All that the Revenue authorities are concerned with is the payment of the assessment due to the Village Chaukidari Fund.

4. The Collector alone can legally make the first transfer, under section 50, and it is not clear that subsequent transfers are valid unless they are made under sections 54 and 55. In order, however, to maintain a record of transferees of *chaukidari chakran* lands, a separate register (no. 81) has been opened. Columns 5, 7 and 8 in the register are also intended for the record of transfers made by sale under section 55 after the first transfer under section 50, Act VI (B. C.) of 1870, and they should be entered in it subject to their being made under section 55, and not by private sale or arrangement, which should not be recognized. The form of notification for sale of *chaukidari* lands for arrears of assessment is given after rule 5 below.

5. When *chakran* lands are sold, under section 55 of Act VI (B. C.) of 1870, in accordance with the provisions of Act XI of 1859, the particulars of the sale should be entered in Register 19 (Sales for arrears of revenue), and should be distinguished from ordinary revenue sales by a letter—say C—or by entry in red ink (B. C. O. no. 11 of May 1901).

APPENDIX C.

Notification under section 6, Act XI of 1859, and section 55, Act VI (B. C.) of 1870, for sale of Chaukidari Chakran lands.

The public are hereby informed that the *chaukidari chakran* lands, specified below, will be sold under the provisions of Act XI of 1859, at the office of the Collector of _____ on _____ (date) at _____ (hour), for arrears of assessment on account of _____ due to the Village Chaukidari Fund, unless such arrears are paid up on or before the said date :—

Serial number of entry in Collector's register of transferred chaukidari lands prescribed by Board's Circular Order no. 11 of December 1897.	Name of the village and thana in which the land is situated.	Area of land transferred as actually found on measurement.			Name and address (if known) of person to whom the land has been transferred under section 56 or sold under section 55 of Act VI (B.C.) of 1870.*	Annual assessment at which the land was transferred.	Amount of the arrears of assessment for which to be sold.			REMARKS.		
		B.	K.	C.			Rs.	A.	P.		Rs.	A.	P.
1	2	3			4	5			6			7
		B.	K.	C.		Rs.	A.	P.	Rs.	A.	P.	

* NOTE.—If there are more than one transferees, only the name of the person who stands first in the Collector's register need be given, the rest being designated as "and others".

Dated the

19

}

15

Collector.

51 Bd. of Rev.

APPENDIX D.

APPENDIX D.

REGISTERS.

Register A.

General Register (Part I) of Revenue-paying lands in estates borne on the revenue-roll of the district of

N.B.—It is not necessary to reserve one page for each estate.

[See sections 6, 7 and 19-A., Act VII (B.C.) of 1876.]

1. Name of estate in tauzi serial order.
2. Tauzi no. of estate.
3. Names of mauzas in which any lands of the estate are situated.
4. Thana name.
5. Mauza no. in Register C.
6. Area in acres of so much of the mauza as falls within the estate.
7. Remarks.

NOTE 1.—As many horizontal lines as necessary would be occupied in columns 3, 4, 5 and 6 for each estate entry. The total area in column 6 would be struck for each estate.

NOTE 2.—The details of the area of the land left common after partition should be recorded in *red ink* in the "Remarks" column, against the parent estate; and against each of the estates resulting from the partition should be recorded, also in *red ink*, the extent of the interest of that estate in the common lands, together with reference to the page of the Register at which details of the area will be found.

General Register (Part II) of Revenue-paying lands situated in the district of — but appertaining to estates borne on the revenue-roll of other districts.

N. B.—It is not necessary to reserve one page for each estate.

[See sections 8 and 19A, Act VII (B. C.) of 1876.]

1. Name of estate in tauzi serial order.
2. Tauzi no. of estate.
3. Particulars of other districts.

APPENDIX D.

Sub-heads—

(a) Name of district on revenue roll of which the estate is borne.

(b) Number in general Register, Part I of the fore-named district.

4. Names of mauzas in which any lands of the estate are situated.

5. Thana name.

6. Mauza no. in Register C.

7. Area in acres of so much of the Mauza as falls within the estate.

8. Remarks.

NOTE 1.—As many horizontal lines as necessary would be occupied in columns 4, 5, 6 and 7 for each estate entry. The total area in column 7 would be struck for each estate.

NOTE 2.—The details of the area of the land left common after partition should be recorded in *red ink* in the "Remarks" column against the parent estate; and against each of the estates resulting from the partition should be recorded, also in *red ink*, the extent of the interest of that estate in the common lands, together with a reference to the page of the Register at which details of the area will be found.

Special and common Registers of under-tenures (E to K).

E.—Special register of istimrari tenures held at a fixed rent from time of permanent settlement (*section 44, Act XI of 1859*).

(*Finally closed.*)

F.—Special register of tenures existing at time of settlement which have not been held at a fixed rent (*ib.*).

(*Finally closed.*)

G.—Common register of talukdari and other similar tenures and farms created since the time of the settlement and held immediately from the proprietors of estates (*section 41, ib.*).

H.—Special register of ditto ditto (*section 42, ib.*).

I.—Common register of leases of lands whereon dwelling-houses, &c., have been erected (*section 43, ib.*).

APPENDIX D.

K.—Special register of leases of lands whereon dwelling-houses, &c., have been erected (*section 43, ib.*).

1. Serial number.
2. Name of applicant and date of application.
3. Name of the pargana and estate in which the tenure is situate.
4. Nature of tenure.
5. Name of the village or villages in which the land is situate.
6. Area, in acres, of the land in the tenure, with boundaries in complete detail.
7. Amount of the annual rent of the tenure, and whether the rent is fixed for a term of years or in perpetuity, and the duties, if any, required to be performed on account of it.
8. Date of the deed constituting the tenure, or the date when the tenure was created.
9. Name of the proprietor who created the tenure.
10. Name of the original holder of the tenure.
11. Name of the present possessor, and if he be not the original holder, mode in which he succeeded to the tenure, and whether he holds jointly or solely.
12. Date on which, and authority by whom registry was ordered.
13. Signature of Collector.
14. Remarks.

NOTE 1.—Registers E and F are now finally closed.

NOTE 2.—For instructions about entries in Register G, see rule 2, section X, page 190.

REGISTER NO. 12.

Separate Accounts under sections 10 and 11 of Act XI of 1859, and sections 70 and 72 of Act VII (B.C.) of 1876.

1. Serial number.
2. Name of applicant and date of application.

APPENDIX D.

REGISTER NO. 12—*concl.*

3. Section and Act under which application is made.
4. Estate concerned—
 - (a) Name of thana.
 - (b) Number on the roll.
 - (c) Government revenue.
5. Specification of share mentioned in the application—
 - (a) Name of mauza.
 - (b) Share of area, if specified.
 - (c) Government revenue.
6. Date and purport of Collector's order.
7. Remarks.

REGISTER NO. 12A.

Particulars of separate accounts opened under sections 10 and 11 of Act XI of 1859, and sections 70 and 72 of Act VII (B.C.) of 1876.

Tauzi number	...	
Name	...	
Pargana	...	
Annual demands, Rs.....		
Revenue-roll reference	..	} Part Volume Page

1. Serial number.
2. Separate account number.
3. Whether share is of whole estate or of a village only.
If latter, give name of village.
4. Extent of share (in annas, gandas, &c.).
5. Share of land revenue.
6. Date of taking effect.

APPENDIX D.

REGISTER NO. 12A—*concl'd.*

7. Separate account—

(a) Case number.

(b) Year.

8. Remarks.

Instructions :—1. The total of shares shown in column 4 with the residuary share must always amount to 16 annas.

2. Separate accounts cancelled or modified should be struck out, and separate accounts opened should be posted in a new line.

3. In the Land-Revenue Roll in the column of remarks a cross reference should be made to the number and pages of the volume of the Register.

REGISTER NO. 13.

Deposits made under section 15, Act XI of 1859, for protection of estates from sale.

1. Serial number.

2. Name of estate and pargana, its number on the roll, and Government revenue:

3. Date of deposit and of signature to the agreement.

4. Nature and amount of the deposit.

5. Dates and amount of payments from the deposit.

6. Particulars of payment in column 5 (from principal so much, from interest so much).

7. Date of withdrawal of the deposit, and receipt of the depositor.

8. Amount of fees realized.

9. Date of realization.

10. Signature of Treasurer.

11. Remarks.

REGISTER NO. 14.

Application for registry, common or special, under sections 40 to 44, Act XI of 1859.

1. Serial number.

2. Name of the applicant and date of application.

APPENDIX D.

REGISTER NO. 14—*concl'd.*

3. Name of the estate in which the tenure or the land is situate.
4. Purport of the application.
5. Date and purport of Collector's order.
6. Date and purport of Commissioner's order, if an appeal be preferred under section 49.
7. Reference to entry in registers G. to K.
8. Amount of fees realized.
9. Date of realization.
10. Signature of Treasurer.
11. Remarks.

REGISTER NO. 19.

Sales for Arrears of Revenue.

1. Serial number.
2. Number of estate on the roll.
3. Names of estate and pargana.
4. Government revenue.
5. Name of defaulter.
6. Nature of arrears.
7. Amount of arrears.
8. Date of sale.
9. Name and signature of purchaser.
10. Price.
11. Earnest money deposited; date of payment.
12. Signatures of Treasurer and Treasury Officer.
13. Balance of purchase-money paid; date of payment.
14. Signatures of Treasurer and Treasury Officer.
15. Date of grant of certificate and receipt for it.
16. Amount still due from defaulting proprietor or bidder, including costs.

APPENDIX D.

REGISTER NO. 19—*concl'd.*

17. Date of forwarding the requisition to the Certificate Officer.
18. Amount recovered.
19. Date of recovery.
20. Remarks.

NOTE 1.—In this and in registers 19A, 20 and 23 enter only actual sales.

NOTE 2.—In districts, where the treasury is the Imperial Bank of India, the Accountant will sign in columns 12 and 14 in place of the Treasurer.

REGISTER NO. 19A.

Sales of Khas Mahal tenures under section 11, Act VII (B.C.) of 1868, read with Act XI of 1859.

1. Serial number.
2. Number of tenure on the roll.
3. Name of tenure with its situation.
4. Annual Government rent.
5. Name of defaulter.
6. Nature of arrears.
7. Amount of arrears.
8. Date of sale.
9. Name and signature of purchaser.
10. Price.
11. Earnest money deposited; date of payment.
12. Signatures of Treasurer and Treasury Officer.
13. Balance of purchase-money paid; date of payment.
14. Signatures of Treasurer and Treasury Officer.
15. Date of grant of certificate and receipt for it.
16. Amount still due from defaulting proprietor or bidder, including costs.
17. Date of forwarding the requisition to the Certificate officer.
18. Amount recovered.
19. Date of recovery.
20. Remarks.

APPENDIX D.

REGISTER NO. 20.

Sales of Patni Taluks under Regulation VIII of 1819.

1. Serial number.
2. Number of case.
3. Name of parties.
4. Date of presentation of petition.
5. Name of *patni taluk* sold, and its annual *jama*.
6. Amount of balance, and on account of what year.

NOTE 1.—The remaining headings, 7 to 14, are the same as headings 8 to 15 of Register 19 excepting that in column 8 the fact whether the superior landlord of the *patni taluk* is or is not the purchaser should also be noted.

To heading 8 after "purchaser" add the words "and whether he is the superior landlord or not".

NOTE 2.—The credit to the treasury of a fee of one per cent from the sale proceeds of the *patni taluks*, as required by clause 2 of section 17 of Regulation VIII of 1819, should be noted in the column of "Remarks" against "each case, e.g." Sale fee Rs. credited to Treasury on

REGISTER NO. 23.

Under-tenures sold under Act VIII (B.C.) of 1865.

1. Serial number.
2. Names of parties.
3. Property sold.
4. Arrear due.
5. Order under which sale took place. (The remaining headings, 6 to 13, are the same as headings 8 to 15 of Register 19.)

NOTE 1.—In this Register enter only actual sales.

NOTE 2.—For the districts of the Orissa Division the heading of the Register shall be:—Estates, tenures, under-tenures and raiyati holdings sold under Act XI of 1859, Act VIII (B. C.) of 1865, and Act VIII of 1885.

APPENDIX D.

REGISTER NO. 35.

Attached Estates.

1. Serial number.
2. Names of parties concerned.
3. Authority by whose order attached.
4. Date of order.
5. Name of estate, and if portion of an estate, extent of share.
6. Government revenue.
7. Date of execution of order.
8. How collections are made.
9. Date of order for release, and by what authority issued.
10. Date of execution of order for release.
11. Remarks.

NOTE 1.—Lands attached by a Criminal Court, except under section 146 of the Code of Criminal Procedure, and made over to the Collector for management, should be entered in red ink in this register to prevent their being lost sight of. The Collector should keep a separate volume of this register for entry therein of all lands of which he is appointed to be receiver under section 146, Criminal Procedure Code, and the Subdivisional Officer will keep a similar subsidiary register of properties attached in his subdivision. (14-2-1905.)

NOTE 2.—Estates or shares of estates attached by a Civil Court but not in the custody of the Collector, should be entered in this register in red ink to guard against their being sold without preliminary issue of the notice required by section 5 of Act XI of 1859. A note to this effect should also be made in the corresponding page of the Tauzi Ledger.

REGISTER NO. 39.

New Estates.

1. Serial number.
2. Name of estate.
3. Name of the pargana in which the estate is situate.
4. By what means added to the roll, whether by partition, resumption, escheat, forfeiture, assessment of alluvion, transfer or otherwise.
5. Date of the order by which the estate became liable to the payment of revenue.
6. Date on which the estate was entered in the general register (A), (Part I), and on the roll.
7. Remarks.

APPENDIX D.

REGISTER NO. 40.*Alterations of Assessment.*

1. Serial number.
2. Name of estate.
3. Name of pargana in which the estate is situate.
4. Rate assessed on soils.
5. Classes of tenants or occupiers.
6. Character of settlement.
7. Term of settlement.
8. Assessment in books.
9. Assessment to be substituted.
10. Date on which new assessment takes effect.
11. Increase.
12. Decrease.
13. Date of orders.
14. By what authority ordered.
15. Remarks.

APPENDIX E.

APPENDIX E.

[SEE SECTION VII, RULE 3.]

Form of Agreement.

WHEREAS I, the undersigned, A. B., am the recorded proprietor of the estate (or the recorded proprietor of annas of the estate, or one of the recorded co-partners of the estate) called _____ which is numbered _____ on the revenue-roll of the district of _____; and whereas I am desirous that the revenue of the said estate should be regularly paid into the treasury of Government according to the established instalments; and whereas, from accident, negligence, or other cause, it may occur that an arrear of revenue remains due from the said estate after sunset of the latest day of payment fixed under section 3, Act XI of 1859.

Therefore, in order to save the said estate from liability to sale in consequence of such default on my part or on the part of my agents (or on the part of any of my co-partners in the said estate), I have this day deposited in the treasury of Government at _____ the sum of _____ rupees (or the undermentioned Government securities) for the purpose of being appropriated to the liquidation of any arrear of revenue which may be due on any of the said latest days of payment from the said estate _____ bearing number _____ on the revenue-roll of the _____ district; and I hereby authorise the Collector of _____ for the time being to apply the said sum of _____ rupees (or the said Government securities, with such interest as may accrue thereon) to the payment of any arrear of revenue which may become due from the said estate, and which may remain unpaid at sunset on the latest day of payment as aforesaid in accordance with the provisions of section 15 of the said Act XI of 1859, to all which provisions I do hereby consent and agree; and this agreement shall be binding on my heirs and assigns.

Signed and executed by

in the presence of

APPENDIX F.

APPENDIX F.

[SEE SECTION VIII, RULE 1.]

Extract from a letter from the Superintendent and Remembrancer of Legal Affairs, no. 980, dated the 15th June 1867.

IN my opinion (1st) the definition of the term "Collector" in section 1, Act VIII (B.C.) of 1865, does not include Deputy Collectors of all grades, and (2nd) that the question of whether the definition referred to does bar a Deputy Collector from holding a sale in execution of decrees under Act XI of 1859 must depend upon the jurisdiction of such Deputy Collector in the matter of the hearing and disposal of such suits.

2. The interpretation clause of the Act in question declares that the word "Collector" includes persons exercising the full powers of a Collector. The question thereby raised is what are the "full powers" of a Collector in regard to the subject matter of the Act.

3. The Act provides (1st) for the sale of *patni* and other cognate tenures, and (2nd) the sale of under-tenures in execution of a decree for arrears of rent. As regards the first subject the Collector derives his present jurisdiction in connection with the process prescribed by law for the recovery of an arrear of rent accruing on *patni* tenures, from this Act alone, and, therefore, for the purpose of the present enquiry, it appears to me that the Collector only, or any officer charged with the revenue administration of a district in similar capacity to a Collector or who has been specially vested by Government with the full powers of a Collector, alone comes within the definition referred to.

4. In the latter case the Collector derives his authority in dealing with the matter of the recovery of ordinary rent arrears from Act XI of 1859, and that authority is, by section 19, Act VI (B.C.) of 1862, vested in all Deputy Collectors *on reference by the Collector*, and in Deputy Collectors in charge of divisions of district or specially empowered by Government without such reference. These officers therefore may be said "quoad" the dealing with suits for the recovery of rent to exercise the full powers of a Collector, and I hold them to be included in the terms of the interpretation clause of Act VIII (B.C.) of 1865.

APPENDIX G.

APPENDIX G.

Appeal from Appellate Decree no. 1597 of 1931.

Jadunandan Singh (Defendant)—*Appellant*,

versus

Srimati Savitri Devi (Plaintiff) and Mahabir Singh and others
(Defendants)—*Respondents*.

KULWANT SAHAY, J.—This is an appeal by the defendant against the decision of the Additional District Judge of Monghyr reversing the decision of the Subordinate Judge and setting aside a revenue sale under Act XI of 1859. It appears that there are several co-sharers in the estate Nadaura, bearing tauzi no. 364 of the Monghyr Collectorate. Some of the co-sharers had opened separate accounts under section 11 of the Act and the share left after the opening of these separate accounts was known as the *ijmali* or the residuary share. The Government revenue payable on account of this *ijmali* share was Rs. 22. The plaintiff owns 1-anna 10-*gandas* 1-*kauri*, and the defendants—second-party own 11-*gandas* out of the total 2-annas 1-*ganda* 1-*kauri* share of the estate which was left as the *ijmali* share. The revenue sale of this *ijmali* share was held on the 20th of September 1927 for arrears of the June instalment of 1927, and it was purchased by the defendant—first-party for a sum of Rs. 120 only. The plaintiff preferred an appeal before the Commissioner against the sale, but this appeal was dismissed on the 18th of November 1927. The present suit was then instituted on the 4th of June 1928 for setting aside the sale. The allegations contained in the plaint were non-service of the notices under sections 6 and 13 and section 7, and that the sale was brought about by the defendants—second-party who fraudulently made default in payment of their share of the Government revenue and who suppressed the several notices issued by the Collector and who purchased the property themselves in the name of their creature the defendant—first-party. The relief asked for was that the sale may be set aside on account of the irregularities which had occasioned serious loss to the plaintiff as property worth more than Rs. 3,000 was sold for the grossly inadequate price of Rs. 120; and secondly, that if the sale be not set aside then the defendant—first-party may be directed to execute a reconveyance in favour of the plaintiff in respect of her share in the estate. The suit was contested

APPENDIX G.

by the defendant—first-party alone who denied the allegations of the plaintiff as regards the irregularities as well as the fraud alleged by her in bringing about the sale.

The learned Subordinate Judge found that there was no irregularity inasmuch as the notices under sections 6 and 13 and section 7 were properly served, and no fraud was proved to have been practised in respect thereof. He further held that the plaintiff was not entitled to a reconveyance inasmuch as the defendant—first-party did not make the purchase for the defendants—second-party but was the real purchaser at the sale. He found that the price fetched at the sale was inadequate; but having regard to the finding of want of irregularity and fraud he held that mere inadequacy of price was no ground for setting aside the sale. Against the decree of the Subordinate Judge the plaintiff preferred an appeal before the District Judge. The learned District Judge affirmed the finding of the Subordinate Judge on the two points raised by the plaintiff in her plaint and pressed before the Subordinate Judge. A third point was, however, raised before the District Judge, which had not been raised either in the plaint or in the grounds of appeal before the District Judge and which did not form the subject matter of any of the issues framed in the suit. The point was that the sale made by the Collector was without jurisdiction and as such it was liable to be set aside. The learned Officiating District Judge gave effect to this contention of the plaintiff and set aside the sale. The defendant no. 1, who was the purchaser at the revenue sale, has preferred this second appeal, and the only contention raised in the appeal was whether the Collector had jurisdiction to sell the *ijmali* share of the estate.

The question of jurisdiction is raised in this way. The sale purported to be made for the arrears of the "June-kist" of 1927. The learned District Judge finds that there was an arrear in June-kist of 1927. The notification issued by the Collector showed the arrears to be Rs. 6-12-6. The District Judge was of opinion that the arrears amounted to only Rs. 3-11-0. The actual amount of arrears is immaterial. The fact found is that there was an arrear in the June-kist of 1927. The learned District Judge, however, refers to the provisions of sections 2 and 3 of the Revenue Sale Law (Act XI of 1859) and says that under section 2 it did not become an arrear of revenue until the 1st of July 1927 and under section 3 of the Act the latest date for payment of such arrears

APPENDIX G.

was the 28th of September 1927, and as the sale was held on the 20th September 1927 it was illegal and invalid as the Collector had no jurisdiction to hold the sale before the 28th of September 1927, and he relied upon the decision of the Privy Council in *Musammat Saraswati Bahuria v. Suraj-narayan Chaudhuri* (I. L. R. 10 Pat. 496).

In the first place it is to be noticed that the point upon which the learned District Judge set aside the sale was not taken by the plaintiff at any stage of the suit until the argument of the appeal before the District Judge. The point involved a determination of a question of fact, viz., what was the kist or instalment according to which the settlement and kistbandi of the mahal in question had been regulated within the meaning of section 2 of the Act. No allegation was made that the 7th of June 1927 was the date of the kist or instalment within the meaning of section 2 and it is overwhelmingly impossible that it could be. No opportunity was given to the defendant to show that the 7th of June was not the kist date under section 2. It is conceded that the latest dates of payment fixed by the Board of Revenue under section 3 of the Act in so far as the present estate is concerned, are the 7th of June, 28th of September, 12th of January, and 28th of March of each year. The learned District Judge has taken it for granted that the 7th of June 1927 was the kist date within the meaning of section 2 of the Act. It is a well-known fact that in Bihar the original *kistbandis* fixed under the engagement entered into with the proprietors for payment of the Government revenue were almost invariably according to the *Fasli* era, and the four dates in June, September, January and March fixed for the payment of the Government revenue are the latest dates of payment determined by the Board of Revenue under section 3 of the Act and could not possibly be *kistbandi* dates of the *Fasli* era. It was pointed out in *Shama Kant Lal v. Kashi Nath Singh* (7 P. L. T. 747) that where the original *kistbandi* under section 2 of the Revenue Sale Act is unknown and forgotten, the latest dates fixed under section 3 are popularly known as the kist dates. They are not the *kistbandi* dates as provided by section 2 but only the latest dates of payment as fixed by the Board of Revenue under section 3 of the Act. The word 'kist' no doubt appears in the *Tauzi* Ledger and the dates in the four months mentioned above are shown there as the June-kist, September-kist, January-kist, and the March-kist. But it has been expressly stated in the *Tauzi* Manual that the word 'kist'

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is therein used to indicate the period between one latest day of payment of the arrears of revenue and the next, and is not used in the restricted sense in which the word is used in section 2 of the Act.

In Saraswati Bahuria's case (I. L. R. 10 Pat. 496) it is evident that it was found as a matter of fact (and not held as a matter of law) that on the evidence which the parties in that case were able to adduce before the Court of first instance, the original *kistbandi* dates under section 2 of the Act coincided with the dates fixed under section 3 of the Act, and it was solely upon the facts as there found that it was held that the sale in that case took place before the latest date of payment prescribed by the Board of Revenue and so was illegal. This distinction was brought out by the Calcutta High Court in *Sri Sri Radha Gobinda Deb Thakur v. Girija Prasanna Mookherjee* (35 C. W. N. 912). That was also the case in *Krishnachandra Bhoumik v. Pabna Dhanabhandar Company, Ltd.* (I. L. R. 59 Cal. 1034).

That in some very rare cases the two dates fixed under sections 2 and 3 of the Act may coincide is illustrated by *Haji Buksh Elahi v. Durlav Chandrá Kar* (I. L. R. 39 Cal. 981) which was a modern case in a Government Khas-mahal. The distinction between the *kistbandi* date under section 2 and the latest date of payment under section 3 was brought out by this Court in *Jagdishwar Narayan v. Muhammad Haziq Hussain* (5 P. L. T. 473) which went in appeal before the Privy Council (I. L. R. 6 Pat. 200), and the Privy Council affirmed the view of this Court on this point and explained the decision in *Haji Buksh Elahi's* case (I. L. R. 39 Cal. 981), but the decision in *Jagdishwar Narayan v. Muhammad Haziq* does not appear to have been brought to their Lordships' notice in *Saraswati Bahuria v. Surajnarain Chaudhuri*.

The learned District Judge has, therefore, fallen into an obvious error in treating the 7th of June 1927 as the *kistbandi* date under section 2 of the Act, in which view the Government revenue would not become an arrear until the 1st of July and the estate could not be sold until the next latest date of payment which was the 28th of September. That the 7th of June 1927 was actually not the *kistbandi* date under section 2 has now been set at rest by the production on behalf of the appellant of the original *kistbandi* from the office of the Collector of Monghyr. Having regard to the fact that the point was not taken in the trial Court and no opportunity

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was given to the defendant to show what the actual kist dates were under section 2 of the Act, we thought it fit to admit in evidence in this Court the original *kistbandi*. The learned Advocate for the plaintiff-respondent waived his right of formal proof of the document, although he objected that the document ought not to be admitted in evidence at this late stage; but having regard to the circumstances, and in order to enable us to give judgment we were of opinion that this is a fit case for admission of new evidence on the point. On referring to this document it is clear that the original *kistbandi* fixed in respect of this estate was according to the *Fasli* era and the eleven kists were payable for the months of that era (except *Bhado* which is blank) in *sicca* currency as follows :—

			Rs.	a.	p.
Asin	2	8 0
Kartik	2	8 0
Agrahan	7	8 0
Pous	15	0 0
Magh	10	0 0
Phalgun	2	8 0
Chait	10	0 0
Baisakh	50	0 0
Jeth	50	0 0
Asarh	5	0 0
Sravan	5	1 13

This was certainly the *kistbandi* of the whole estate bearing tauzi no. 364 and could only vary with the compensation for *sicca* currency. By the opening of the separate accounts the revenue for the residuary or *ijmali* share was fixed at Rs. 22 and on referring to the *Tauzi* Ledger it appears that for the payment of this sum of Rs. 22 the latest dates were as follows :—

			Rs.	a.	p.
7th June	15	2 0
28th September	1	10 0
12th January	1	10 0
28th March	3	10 0

APPENDIX G.

The payment not having been made on the latest date, viz., the 7th of June 1927, it was within the jurisdiction of the Collector to sell the estate after that date, and, therefore, the sale held on the 20th of September was a valid sale.

The decree of the learned District Judge must therefore be set aside and that of the Subordinate Judge restored. The appeal must be allowed with costs throughout.

KULWANT SAHAY.

MACPHERSON, J.—I agree.

T. S. MACPHERSON.

KHAJA MOHAMED NOOR, J.—I agree.

KHAJA MOHAMED NOOR.

HIGH COURT, PATNA :

The 16th March 1933.

In a note at pages 29n to 32n of Volume XIV of the *Patna Law Times*, the Editor, in commenting on the special interest of this judgment, observed :—

“ Nothing could better illustrate the position than the particulars of Mahal Ladugaon, a share of which was in contest in the case of Saraswati Bahuria. They are taken from the Tauzi Ledger and the Land Revenue and other registers of the Collector.

Account of the total jama of Mahal Ladugaon, pargana Bachaur, tauzi no. 554.

	Rs.	a.	p.
Annual <i>jama</i> as at decennial settlement	450	0	0
<i>Ezad Batta</i> (compensation for <i>sica</i> coinage).	30	0	0
<i>Nimaksair</i> (salt petre)	4	11	1
	484 11 1		
	484 11 1		

APPENDIX G.

Kistbandi of the Mahal (Fasli era) and last dates for payment (as shown in the Land Revenue Register) of an arrear of revenue.

Month of Fasli era (section 2).	Original instalments and distribution.	When it became an arrear of revenue.	Last date for payment (section 3 of Act XI of 1859) of " arrear of revenue ".
	Rs. a. p.		
<i>Chait</i> ...	60 0 0		
<i>Baisakh</i> ...	60 0 0		
	<u>120 0 0</u>		
<i>Nimaksair</i> ...	1 2 8		
	<u>121 2 8</u>	1st <i>Jeth</i> ...	7th June (first kist).
<i>Jeth</i> ...	60 0 0		
<i>Asarh</i> ...	60 0 0		
<i>Sawan</i> ...	30 0 0		
	<u>150 0 0</u>		
<i>Nimaksair</i> ...	1 8 7		
	<u>151 8 7</u>	1st <i>Bhado</i> ...	28th September (second kist).
<i>Asin</i> ...	15 0 0		
<i>Kartik</i> ...	15 0 0		
<i>Aghan</i> ...	30 0 0		
	<u>60 0 0</u>		
<i>Nimaksair</i> ...	0 9 4		
	<u>60 9 4</u>	1st <i>Pus</i> ...	12th January (third kist).
<i>Pus</i> ...	60 0 0		
<i>Magh</i> ...	45 0 0		
<i>Phagun</i> ...	45 0 0		
	<u>150 0 0</u>		
<i>Nimaksair</i> ...	1 7 4		
	<u>151 7 4</u>	1st <i>Chait</i> ...	28th March (fourth kist).
Total ...	<u>484 11 11</u>		

APPENDIX G.

Each date for payment of the four 'kists' (which are not monthly instalments of the *kistbandi* but two or more such instalments lumped together) has been so fixed that the sums in respect of which it is the penal date, have each become an "arrear of revenue" on or before the date. Indeed so far as the first three 'kists' are concerned, they invariably fall in the month of the English era succeeding that in which the last instalment included in them become 'an arrear of revenue' within the meaning of section 2. Thus the first day of Jeth, Bhado and Pus, respectively, never falls later in the calendar year than the months of May, August and December, respectively. As to the fourth kist, the Board of Revenue has been compelled by the necessity of collecting as much as possible of the 'arrears of revenue' within the financial year which terminates with the month of March, to allow a smaller margin but the 28th day of March is the latest date on which the first day of Chait in the *Fasli* year can fall, and in the years 1918 to 1933 inclusive it has always fallen earlier except in 1918 when it fell on the 28th March. Thus, if there is an arrear of revenue on any of those dates (which are really dates fixed under section 3 though popularly designated 'kist days'), it is open to the Collector to sell forthwith and in particular without waiting for the first day of the next succeeding month of the English era which is altogether irrelevant, or for the so-called next 'kist day'.

Part of the confusion has arisen from the unwise use in the *Tauzi Manual* of 'kist' in a different connotation from that in which *kistbandi* is used in section 2 of the *Land Revenue Sales Act*, a fact often lost sight of. Very occasionally too as in the case of *Haji Buksh Elahi* (39 Cal. 981) there may have been deviation from the normal in modern times, either because the circumstances of the case were peculiar or through ignorance or mistake in the Collector's office.

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